

General Permit Number: NAO-2007-2429
Applicant: General Public in Virginia

Effective Date: June 1, 2007
Expiration Date: June 1, 2012

**Department of the Army
State Program General Permit
Commonwealth of Virginia
07-SPGP-01**

I. AUTHORITIES:

07-SPGP-01 authorizes the discharge of dredged or fill material in nontidal waters of the United States associated with certain residential, commercial, and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia under the regulatory jurisdiction of the Norfolk District Army Corps of Engineers (Corps). These projects must have minimal individual and cumulative impacts and meet the terms and conditions outlined herein. The use of 07-SPGP-01 shall be restricted to those projects that have avoided and minimized impacts to waters of the United States, including wetlands, to the maximum extent practicable. The Clean Water Act (CWA) Section 404(b)(1) guidelines state that no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge that would have less adverse effect on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences.

The people of the Commonwealth of Virginia are hereby authorized by the Secretary of the Army and the Chief of Engineers pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the CWA (33 U.S.C. § 1344) to perform the aforementioned work in nontidal waters and wetlands of the Commonwealth as described herein. The Corps' authority and guidance to develop general permits is contained in 33 U.S.C. § 1344(e) and 33 C.F.R. § 325.2(e)(2), 33 C.F.R. § 325.3(b), and Corps Regulatory Guidance Letter 83-7.

II. PROCEDURES:

A. Delineation Confirmations:

For any Residential, Commercial, or Institutional Development Activity or Linear Transportation Activity covered by 07-SPGP-01, a proponent must first obtain a confirmed delineation of all waters of the United States on the property prior to submission of an application. The Corps must be contacted to obtain a delineation confirmation. A confirmed delineation is not required for VDOT linear transportation projects (these projects must adhere to a separate, but similar, procedure).

B. Application:

Applicants shall use the newest version of Joint Permit Applications (JPAs), and supply drawings required by the applicable JPA, and submit these applications to the Virginia Marine Resources Commission (VMRC). **Applicants must write the letters “SPGP” clearly across the top of the first page of the application form or processing of the application may be delayed.** The applicable VWP permit regulations define the information required for a complete VWP permit application (see 9 VAC 25-210-80, 9 VAC 25-660-50, 9 VAC 25-670-50, 9 VAC 25-680-50, and 9 VAC 25-690-50). This information (the completed JPA and associated required drawings) plus a confirmed delineation from the Corps will be required to render an application complete for 07-SPGP-01 purposes. (VDOT will continue to utilize the Inter-Agency Coordination Meeting JPA.)

C. State Approvals:

In order for 07-SPGP-01 to be valid, permittees must obtain the following state approvals prior to commencement of work in waters of the United States.

- (1) VWP permit from the DEQ
- (2) VMRC permit, when required

Authorizations under 07-SPGP-01 also require that permittees ensure that their projects are designed and constructed in a manner consistent with all state and local requirements pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 10-20-10 *et seq.*). Authorizations under 07-SPGP-01 do not supersede state or local government authority or responsibilities pursuant to the Act.

D. Definitions:

For purposes of 07-SPGP-01, “loss” of waters of the United States shall be defined as filling (including placement of pipes or other water conveyances in waters) as well as other permanent adverse effects, including mechanized landclearing, excavation (including channelization), flooding, draining, including temporary flooding and draining, etc. The acreage/linear footage of loss of waters of the United States is the threshold measurement of the impact to existing waters for determining whether a project may qualify for 07-SPGP-01; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values.

For purposes of 07-SPGP-01, “natural stream design” means that the channel should mimic the dimension, pattern, and profile of a representative reference stream reach.

III. AUTHORIZED ACTIVITIES

A. Residential, Commercial, and Institutional Development Activities:

Eligibility Criteria:

- Activities that are subject to Corps jurisdiction
- Involves the discharge of dredged or fill material associated with residential, commercial, and institutional projects causing the loss of not more than one acre of nontidal wetlands or waters or the loss of not more than 2,000 linear feet of streams, unless otherwise excluded by 07-SPGP-01
- Meets the general conditions of 07-SPGP-01 listed on pages 6-13 and any special conditions required of each project-specific authorization
- Provides compensatory mitigation for unavoidable impacts to over 1/10 acre wetlands and to over 300 linear feet of stream (or mitigation for any lower level of impact if it is determined that it is necessary to ensure that a project's impacts are minimal in nature) in accordance with the mitigation standards general condition on pages 9 and 10

Discharges associated with residential, commercial, and institutional development activities include those outlined in DEQ's General Permits (see 9 VAC 25-660 *et seq.*, 9 VAC 25-670 *et seq.*, 9 VAC 25-680 *et seq.*, and 9 VAC 25-690 *et seq.*) and are associated with the following: construction or expansion of residential, commercial, or institutional building foundations, building pads, and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, stormwater management facilities, and recreational facilities such as playgrounds, playing fields, and golf courses (provided the golf course is an integral part of the residential development). Residential developments include multiple and single unit developments. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. For residential, commercial, and institutional developments, the aggregate total loss of waters of the United States cannot exceed one acre of nontidal wetlands or waters or 2,000 linear feet of streams.

Discharges of dredged or fill material associated with residential, commercial, and institutional activities causing the loss of more than one acre of nontidal wetlands or waters or over 2,000 linear feet of streams will require a Corps individual permit, including issuance of a public notice and full public interest review.

Proponents of residential, commercial, or institutional developments are subject to the Corps' subdivision guidance dated March 15, 1993 and June 2, 1999, or any subsequent guidance that supersedes or supplements those documents.

Federal Screening Procedures:

All residential, commercial, and institutional development activities containing impacts to over ½ acre of wetlands or waters or to over 300 linear feet of stream will be reviewed by the Corps, the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service (FWS).

If EPA or FWS determines that there are project specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or concerns regarding the amount

and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District Commander will exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

Any Corps' concerns shall be relayed to the DEQ and addressed during the DEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process, such as an individual permit.

B. Linear Transportation Activities:

Eligibility Criteria:

- Activities that are subject to Corps jurisdiction
- Involves the discharge of dredged or fill material associated with the construction, expansion, modification, or improvement of linear transportation projects not causing the loss of more than 1/3 acre of nontidal waters of the United States, including wetlands, unless otherwise excluded by 07-SPGP-01
- Meets the general conditions of 07-SPGP-01 listed on pages 6-13 and any special conditions required of each project-specific authorization
- Provides compensatory mitigation for all unavoidable impacts to wetlands and for all impacts to over 300 linear feet of stream (or mitigation for any lower level of impact if it is determined that it is necessary to ensure that a project's impacts are minimal in nature) in accordance with the mitigation standards general condition on pages 9 and 10. Stream relocation using natural stream design is considered to be self-mitigating.

Discharges associated with linear transportation projects include the construction, expansion, modification, or improvement of highways, roads, railways, trails, and airport runways and taxiways. All relocations of utility lines within the right-of-way/easements within the termini of the project are also covered under this Activity. The only lateral encroachments allowed are those that do not cause the loss of more than 1/3 acre of waters of the United States, including wetlands, involve only stream relocation (no piping or riprap of the stream bottom, etc.), and use natural stream design for the stream relocation.

Federal Screening Procedures:

All linear transportation activities involving impacts to over 300 linear feet of stream at any single impact area or containing multiple single and complete impact areas on the same project that additively exceed 1/3 acre of impact, or where lateral stream encroachments of a project cumulatively impact more than 300 linear feet will be reviewed by the Corps, the EPA, and the FWS.

If EPA or FWS determines that there are project specific concerns regarding avoidance and/or minimization of impacts to the aquatic environment or the amount and/or type of compensatory mitigation being proposed, the applicant will be required to address those concerns. If the concerns are not addressed to the satisfaction of the objecting agency(ies), the Corps District

Commander will exert his/her discretionary authority to require the project to be processed under the Corps' individual permit process.

Any Corps' concerns shall be relayed to the DEQ and addressed during the DEQ permitting process. If concerns are not satisfied through that process, the Corps District Commander may exert his/her discretionary authority to require the project to be processed under an alternate Corps permitting process, such as an individual permit.

C. Exclusions from Coverage:

The following activities and resources areas are excluded from coverage by 07-SPGP-01 and would require different types of Corps permits:

- Conversion of waters and/or wetlands for agricultural production and agriculture-related activities (crop fields or pasture); farm buildings; grain storage facilities; grassed waterways; low water crossings; impoundments for irrigation, livestock watering, and fire prevention purposes; animal feeding operations; waste storage facilities; and farm access roads
- Wetland areas composed of 10% or more of the following species (singly or in combination) in any stratum: Atlantic white cedar (*Chamaecyparis thyoides*), bald cypress (*Taxodium distichum*), water tupelo (*Nyssa aquatica*), or overcup oak (*Quercus lyrata*) (Percentages may be based on stem counts, basal area, or percent areal cover.)
- Wetland areas underlain by histosols (Histosols are organic soils that are often called mucks, peats, or mucky peats. The list of histosols includes, but is not limited to, the following soil series: Back Bay, Belhaven, Dorovan, Lanexa, Mattamuskeet, Mattan, Palms, Pamlico, Pungo, Pocaty, and Rappahannock.)
- Placement of septic tanks, establishment of drain fields, and construction of associated perimeter ditches
- Corps-regulated normal residential gardening, lawn, and landscape maintenance
- Construction of extended-detention basins and enhanced extended-detention basins designed, constructed, and maintained to function in accordance with the current Virginia Department of Conservation and Recreation (DCR) standards for such facilities or local standards that, at a minimum, meet the DCR standards, unless the area within the entire basin is considered impacted and is covered under a VWP permit
- Lateral encroachments on linear transportation projects that do not propose natural stream design to relocate impacted streams

D. Resource Areas of Special Concern:

Activities proposed in the following waters will automatically require consultation with the FWS due to Endangered Species Act (ESA) concerns:

- Powell River: From the Tennessee-Virginia state line upstream to the Route 58 bridge in Big Stone Gap and one mile upstream of the mouth of any tributary adjacent to this portion of the River

- Clinch River: From the Tennessee-Virginia state line upstream to Route 632 at Pisgah in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the River (the Little River, a tributary to the Clinch River, requires consultation from its confluence with the Clinch River to its confluence with Maiden Spring Creek and one mile upstream of the mouth of any tributary adjacent to this portion of the Little River)
- North Fork, Holston River: From the Tennessee-Virginia state line to the Smyth County/Bland County line and one mile upstream of the mouth of any tributary adjacent to this portion of the River
- Copper Creek: From its junction with the Clinch River to the Route 58 bridge at Dickensonville in Russell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek
- Indian Creek: From its junction with the Clinch River upstream to the fourth Norfolk and Western Railroad bridge at Van Dyke in Tazewell County and one mile upstream of the mouth of any tributary adjacent to this portion of the Creek
- Middle Fork, Holston River: From the Tennessee-Virginia state line to the confluence of Walker Creek in Smyth County near Marion, Virginia
- South Fork, Holston River: From the junction of the Middle Fork, Holston River upstream to the confluence of Beech Creek in Washington County

Activities proposed within the boundaries of the designated Upper New River Wild and Scenic River study area (from the Route 460 bridge over the New River near Glen Lyn, Virginia to the West Virginia/Virginia state line), and all adjacent lands subject to the study area, will require consultation with the Huntington District Corps of Engineers.

IV. INDIVIDUAL PERMIT:

Work that does not meet one or more of the terms and general conditions of 07-SPGP-01, including work that has been determined to be more than minimal in nature (at any impact level), will require consideration under a different type of Corps permit evaluation, such as an individual permit. If an individual permit is required, a public notice will be issued and a full public interest review will be conducted by the Corps.

V. GENERAL CONDITIONS:

The following conditions apply to all activities authorized under 07-SPGP-01.

1. **Other permits.** Authorization does not obviate the need to obtain other Federal, state, or local authorizations required by law or to comply with all Federal, state, or local laws.
2. **Minimal effects.** Projects authorized shall have no more than minimal individual or cumulative adverse environmental impacts, as determined by the Corps.
3. **Discretionary authority.** The Corps District Commander retains discretionary authority to require processing of an individual permit based on concerns for the aquatic environment or for any other factor of the public interest (33 C.F.R. § 320.4(a)). This authority is exercised on a case-by-case basis.
4. **Single and complete projects.** 07-SPGP-01 shall only be applied to single and complete projects. For purposes of 07-SPGP-01, a single and complete project means the total project proposed or accomplished by one owner/developer or partnership or other

association of owners/developers and which has independent utility. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as single and complete projects with independent utility. For linear transportation projects with multiple crossings, the “single and complete” project (i.e., single and complete crossing) will typically apply to each crossing of a separate water of the United States (i.e., single waterbody) at separate and distinct locations. However, in cases where there are many crossings in close proximity, numerous crossings of the same waterbody, or multiple crossings that otherwise may have more than minimal individual or cumulative impacts, the Corps has the discretion, on a case-by-case basis, to consider all of the crossings cumulatively as one single and complete project.

5. **Multiple general permit authorizations.** 07-SPGP-01 may not be combined with any Corps general permit (including Nationwide or Regional permits) for a single and complete project. However, the Linear Transportation and Residential, Commercial, and Institutional Development Activities (detailed in Section II) within 07-SPGP-01 may be combined as long as they do not cumulatively exceed the acreage limit or stream length of the Activity with the highest specified acreage limit or stream length limit.
6. **Permit on-site.** The permittee shall ensure that a copy of 07-SPGP-01 and the accompanying authorization letter are at the work site at all times. These copies must be made available to any regulatory representative upon request. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be expected to comply with all conditions of any 07-SPGP-01 authorization.

General Conditions Related to National Concerns:

7. **Historic properties.** (a) In cases where it is determined that the activity may affect properties listed, or eligible for listing on, the National Register of Historic Places, the activity is not authorized until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied. (b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the Corps and/or the DEQ with the appropriate documentation to demonstrate compliance with those requirements. (c) Non-federal permittees must submit a statement regarding the authorized activity’s potential to cause effects to any historic properties listed, or determined to be eligible for listing on, the National Register of Historic Places, including previously unidentified properties. The statement must say which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location or potential for the presence of historic resources can be sought from the Virginia Department of Historic Resources and the National Register of Historic Places. Where an applicant has identified historic properties which the proposed activity may have the potential to affect, the applicant shall not begin the activity until notified by the Corps or the DEQ that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. (d) Prospective permittees should

be aware that Section 110(k) of the NHPA (16 U.S.C. § 470(h)-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effects created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, State Historic Preservation Officer, Tribal Historic Preservation Officer, appropriate Indian tribes if the undertaking occurs on or affect historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have legitimate interest in the impacts to the permitted activity on historic properties. If the permittee, during construction or work authorized herein, encounters a previously unidentified archaeological or other cultural resource, he/she must immediately stop work and notify the Corps and DEQ of what has been found. Coordination with the Virginia Department of Historic Resources will commence and the permittee will subsequently be advised when he/she may recommence work.

8. Tribal rights. No activity authorized may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. National lands. Authorized activities shall not impinge upon the value of any National Wildlife Refuge, National Forest, National Park, or any other area administered by the FWS, U.S. Forest Service, or National Park Service.

10. Endangered species. No activity is authorized which:

- Is likely to jeopardize the continuing existence of a threatened or endangered species, or a species proposed for such designation, as identified under the ESA, or which will destroy or adversely modify the critical habitat of such species
- Would result in a lethal or non-lethal “take” of any threatened or endangered species of fish or wildlife without an incidental take statement from the FWS

Applicants shall include, in their permit applications, information regarding the presence of any Federally listed threatened or endangered species or designated critical habitat in the vicinity of the project site that might be affected by the proposed work. Information regarding threatened or endangered species may be obtained directly from the FWS’ Virginia Field Office at 6669 Short Lane, Gloucester, VA 23061 and/or the National Marine Fisheries Service Habitat Conservation Division at James J. Howard Marine Sciences Laboratory, 74 Magruder Road, Highlands, NJ 07732.

11. Wild and Scenic Rivers. Currently, there are no designated Wild and Scenic Rivers in the Commonwealth of Virginia; however, the portion of the Upper New River from Glen Lyn, Virginia to the West Virginia/Virginia state line was designated a “study river” by Congress on October 26, 1992. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a “study river” for possible inclusion in the system, while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river has determined, in writing, that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic

Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Impacts that occur in these resource areas will require coordination with the appropriate Federal agency.

12. **Federal navigation project.** Authorized activities may not interfere with any existing or proposed Federal navigation projects.
13. **Navigation.** (a) No authorized activity may cause more than a minimal adverse effect on navigation. (b) The permittee understands and agrees that if future operations by the United States require the removal, relocation, or other alteration of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his/her authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.
14. **Floodplains.** All practicable efforts shall be made to conduct the work authorized by 07-SPGP-01 in a manner so as to avoid any adverse impact on the Federal Emergency Management Agency (FEMA) designated 100-year floodplain.
15. **Real estate.** Activities authorized under 07-SPGP-01 do not grant any Corps real estate rights. If real estate rights are needed from the Corps, you must contact the Corps Real Estate Office at (757) 201-7735 or at the address listed on the front page of this permit.
16. **Environmental Justice.** Activities authorized under 07-SPGP-01 must comply with Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations".
17. **Federal liability.** In issuing 07-SPGP-01, the Federal government does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by 07-SPGP-01; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.

General Conditions Related to Minimizing Environmental Impacts:

18. **Avoidance and minimization.** Discharges of dredged or fill material into waters of the United States shall be avoided and impacts minimized to the maximum extent practicable.
19. **Mitigation standards.**
 - *Wetland mitigation* will generally be required for all impacts over 1/10 acre on residential, commercial, and institutional development projects and for all impacts on linear transportation projects. Generally, the minimum required wetland mitigation ratios will be as follows: 2:1 for forested wetlands, 1.5:1 for scrub-shrub wetlands, 1:1 for herbaceous emergent wetlands, and 1:1 for conversion of forested wetlands to herbaceous emergent wetlands. Wetland mitigation can include wetland preservation, creation, restoration or enhancement (including restoration or enhancement of upland

forested buffers), purchase of commercial wetland mitigation bank credits, and/or contributions to the Virginia Aquatic Resources Trust Fund.

- *Stream mitigation* will generally be required for any project that involves more than 300 linear feet of stream impact. Minimum stream mitigation requirements will be determined using the current Corps and DEQ endorsed assessment methodology. Stream mitigation can include preservation of existing stream channels and riparian (wetland or upland) buffers, enhancement or restoration of existing stream channels, purchase of commercial stream mitigation bank credits, and/or contributions to the Virginia Aquatic Resources Trust Fund.
- The need to require mitigation for impacts to open waters will be determined on a case-by-case basis.
- Where local zoning ordinances provide for riparian and floodplain protection pursuant to the Chesapeake Bay Preservation Act (Virginia Code 10.1-2100 *et seq.*) and the Chesapeake Bay Preservation Area Designation and Management Regulations (9 VAC 1-20 *et seq.*), the use of buffers as a form of compensatory mitigation shall be allowed only (a) where the extent of the buffer exceeds the lateral extent already required by local ordinances pursuant to the Act and the regulations or (b) where the quality of the existing protected buffer area is enhanced to provide greater water quality protection benefits.

20. **Heavy equipment in wetlands.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
21. **Temporary fills.** All temporarily disturbed waters and wetlands must be restored to their pre-construction contours as soon as they are no longer needed. Once restored to their natural contours, their soil must be mechanically loosened to a depth of 12 inches and wetland areas must be seeded or sprigged with appropriate native vegetation.
22. **Sedimentation and erosion control.** Appropriate erosion and sediment controls must be employed and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark, must be permanently stabilized at the earliest practicable date.
23. **Aquatic life movements.** No authorized activities may substantially disrupt the movement of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water. The Corps has determined that fish and wildlife are most often present in any stream being crossed, in the absence of evidence to the contrary.

All pipes and culverts placed in streams must be countersunk at both the inlet and outlet ends, unless indicated otherwise by the DEQ on a case-by-case basis (see below). Pipes that are 24" or less in diameter shall be countersunk 3" below the natural stream bottom. Pipes that are greater than 24" in diameter shall be countersunk 6" below the natural stream bottom. All single pipes or culverts (with bottoms) shall be depressed (countersunk) below the natural streambed at both the inlet and outlet of the structure. In sets of multiple pipes or culverts, at least one pipe or culvert shall be countersunk at both the inlet and outlet to convey low flows.

- Exemptions: Countersinking requirements do not apply to:
 - Extensions of existing pipes or culverts that are not countersunk
 - Maintenance to pipes/culverts that does not involve replacing the pipe/culvert

- Pipes that are placed above ordinary high water, such as those placed to allow for floodplain flows
 - Bottomless culverts or pipe arches
- Hydraulic capacity: Pipes should be adequately sized to allow for the passage of ordinary high water with the countersinking and invert restrictions taken into account.
- Pipes on bedrock:
 - Replacement of an existing pipe culvert: Countersinking is not required provided the elevations of the inlet and outlet ends of the replacement pipe/culvert are no higher above the stream bottom than those of the existing pipe/culvert. Documentation (photographic or other evidence) must be maintained in the permittee's records showing the bedrock condition and the existing inlet and outlet elevations.
 - Pipes in new locations: If the prospective permittee determines that bedrock prevents countersinking, they should evaluate the use of a bottomless pipe/culvert, bottomless utility vault, span (bridge), or other bottomless structure to cross the waterway, and also evaluate alternative locations for the new pipe/culvert that will allow for countersinking. If the permittee determines that countersinking is not practicable, they must include the documentation required below along with their application package.
 - Problems encountered during construction: When a pipe/culvert is being replaced and, during construction, it is found that the streambed/banks are on bedrock, then the permittee must stop work and contact the DEQ. The permittee must provide specific information concerning site conditions and limitations on countersinking. The permittee should recognize that the DEQ could determine that the work will not qualify for 07-SPGP-01.
- Emergency situations: A permittee is encouraged to countersink emergency pipe replacements at the time of the replacement, in accordance with the conditions above. However, if conditions or timeframes do not allow for countersinking, then the pipe can be replaced as it was before the washout, but the permittee will have to come back and replace the pipe/culvert and countersink it in accordance with the conditions above. The replacement of the washed out pipe is viewed as a temporary repair, and a countersunk replacement should be made at the earliest possible date. The permittee must notify the DEQ of all pipes/culverts that are replaced without countersinking at the time that the work occurs, even if the work constitutes an otherwise non-reporting activity, and must provide the planned schedule for installing a countersunk replacement (it is acceptable to submit such notification by e-mail).
- Submittal requirements: If a prospective permittee determines that countersinking is not practicable, then they must submit a narrative, along with their application, documenting measures evaluated to minimize disruption of the movement of aquatic life as well as documentation of the cost, engineering factors, and site conditions that prohibit countersinking the pipe/culvert. Options that must be considered include use of a bottomless pipe, partial countersinking (such as less than 3" of countersinking, or countersinking of one end of the pipe), and constructing stone step pools, low rock weirs downstream, or other measures to provide for the movement of aquatic organisms. The narrative must also include photographs documenting site conditions. The prospective permittee may find it helpful to contact their regional fishery

biologist for the Virginia Department of Game and Inland Fisheries (DGIF) for recommendations about the measures to be taken to allow for fish movement.

24. **Discharge of pollutants.** All authorized activities involving any discharge of pollutants into waters of the United States shall be consistent with applicable water quality standards, effluent limitations, standards of performance, prohibitions, and pretreatment standards and management practices established pursuant to the CWA (33 U.S.C. § 1251 *et seq.*) and applicable state and local laws. No discharge of dredged or fill material in association with this authorization may consist of unsuitable material such as trash, debris, car bodies, asphalt, etc.
25. **Obstruction of high flows.** Discharges of dredged or fill material must not permanently restrict or impede the passage of normal or expected high flows.
26. **Waterbird breeding areas.** Discharges of dredged or fill material into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
27. **Native trout and anadromous fishes.** Authorizations for discharges of dredged or fill material into native trout waters or anadromous fish spawning areas are conditioned to limit in-stream work within the timeframes recommended by the DGIF.
28. **Water supply intakes.** No discharge of dredged or fill material may occur in proximity of a public water supply intake.

General Procedural Conditions:

29. **Inspections.** The permittee shall allow the Corps and/or the DEQ to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this permit are in accordance with the terms and conditions prescribed herein. The Corps reserves the right to require post-construction engineering drawings and/or surveys of any work authorized under 07-SPGP-01, as deemed necessary on a case-by-case basis.
30. **Maintenance.** The permittee shall maintain the work authorized herein in good condition and in conformance with all terms and conditions of this permit. All fills shall be properly maintained to ensure public safety.
31. **Property rights.** 07-SPGP-01 does not convey any property rights, either in real estate or material, or convey any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of Federal, state, or local laws or regulations.
32. **Modification, suspension, and revocation.** 07-SPGP-01 and individual verifications under 07-SPGP-01 may be either modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 C.F.R. § 325.7. Any such action shall not be the basis for any claim for damages against the United States.
33. **Restoration directive.** The permittee, upon receipt of a restoration directive, shall restore the waters of the United States to their former conditions without expense to the United States and as directed by the Secretary of the Army or his/her authorized representative. If the permittee fails to comply with such a directive, the Secretary or his/her designee, may restore the waters of the United States to their former conditions, by contract or otherwise, and recover the cost from the permittee.
34. **Special conditions.** The Corps may impose other special conditions on a project authorized pursuant to 07-SPGP-01 that are determined necessary to minimize adverse navigational and/or environmental effects or based on any other factor of the public

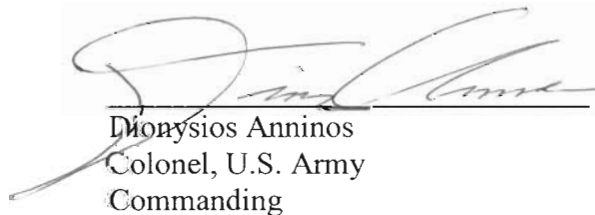
interest. Failure to comply with all conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee, or his/her contractor, to criminal, civil, or administrative penalties and/or restoration.

35. **False or incomplete information.** In granting authorization pursuant to this permit, the Corps has relied upon information and data provided by the permittee. If, subsequent to notification by the Corps or DEQ that a project qualifies for this permit, such information and data prove to be materially false or materially incomplete, the authorization may be suspended or revoked, in whole or in part, and/or the United States may institute appropriate legal proceedings.
36. **Abandonment.** If the permittee decides to abandon the activity authorized under 07-SPGP-01, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.
37. **Transfer of authorization.** In order to transfer authorization under 07-SPGP-01, the transferee and permittee must supply the DEQ with a written request to undertake a transfer. Such transfer is effective upon written approval by DEQ.
38. **Binding effect.** The provisions of the permit authorization shall be binding on any assignee or successor in interest of the original permittee.

General Conditions Regarding Duration of Authorizations, Time Extensions for Authorizations, and Permit Expiration:

39. **Duration of authorization.** Activities authorized under 07-SPGP-01 must be completed by June 1, 2012.
40. **Time extensions.** If a permittee is unable to complete the work authorized under 07-SPGP-01 in the time limit provided in the initial authorization, he/she must submit a request for a time extension to the Corps and DEQ for consideration at least one month prior to the expiration of the permit authorization.
41. **Expiration of 07-SPGP-01.** Unless further modified, suspended, or revoked, 07-SPGP-01 will be in effect until June 1, 2012. Upon expiration, it may be considered for revalidation.

6/1/07
date.


Dionysios Anninos
Colonel, U.S. Army
Commanding